

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOSE LUIS GARCIA, aka Avelino  
Castillon Torres,  
CDCR #E-14150,

Civil No. 15cv0215 BTM (DHB)

Plaintiff,

vs.

KAMALA D. HARRIS;  
ERIK H. HOLDER, U.S. Attorney  
General,

Defendants.

**ORDER DENYING PLAINTIFF'S  
MOTION FOR  
RECONSIDERATION  
PURSUANT TO  
FED. R. CIV. P. 60(b)**

[Doc. No. 5]

**I. Procedural History**

On January 26, 2015, Jose Luis Garcia (“Plaintiff”), a prisoner proceeding pro se and currently incarcerated at High Desert State Prison (“HDSP”), filed this civil action, comprised of a two-page pleading entitled “Motion to Request for Stolen Documents from State and Federal Habeas Corpus” (Doc. No. 1).

While it was not altogether clear, the Court liberally construed Plaintiff's pleading, in light of his pro se status, as an attempt to recover monetary damages for documents he claimed were “lost or destroyed” in an unidentified state and/or federal habeas corpus proceeding. He also asked this Court to order his “unconditional

1 release" due to a "crime" he alleged was "committed by C/O Parker, the Committee at  
 2 MCSP (Mule Creek State Prison) and multiple adverse parties." *See Doc. No. 1 at 1-*  
 3 2.<sup>1</sup>

4 Because Plaintiff did not pay the \$400 civil filing fee required by 28 U.S.C.  
 5 § 1914(a), or submit a Motion to Proceed In Forma Pauperis ("IFP") pursuant to 28  
 6 U.S.C. § 1915(a) at the time he initiated suit, his case was dismissed without  
 7 prejudice. *See May 18, 2015 Order (Doc. No. 2).* However, the Court simultaneously  
 8 conducted its initial screening of Plaintiff's pleading as required by 28 U.S.C. §  
 9 1915A, and noted that while it "would normally grant Plaintiff an opportunity to  
 10 either submit the full filing fee or file a Motion to Proceed IFP," doing so would be  
 11 futile because a review of Plaintiff's pleading "reveal[ed] that his case lack[ed] proper  
 12 venue." *Id.* at 4.

13 Specifically, the Court noted Plaintiff failed to allege a county of residence for  
 14 either Defendant Harris or Holder, and that the few factual allegations he did include  
 15 in his pleading involved a Correctional Officer named Parker (who was not named as  
 16 a Defendant), and "the Committee at MCSP," whom he claimed "hinder[ed] or  
 17 "obstruct[ed]" his "liberty" by either losing or destroying "documents regarding [his]  
 18 state and federal habeas corpus" proceedings. *See Doc. No. 1 at 1; see also Piedmont*  
*19 Label Co. v. Sun Garden Packing Co., 598 F.2d 491, 496 (9th Cir. 1979)* (plaintiff  
 20 bears the burden of showing venue is proper).

21 Therefore, to the extent it appeared the substantial part of the events or  
 22 omissions giving rise to Plaintiff's claims occurred at MCSP, in Ione, California, and  
 23 located in Amador County, or to the extent the exhibits attached to his pleading  
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25       <sup>1</sup> The Court "may take notice of proceedings in other courts, both within and  
 26 without the federal judicial system, if those proceedings have a direct relation to matters  
 27 at issue." *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (district court  
 28 quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)). Attached to  
 Plaintiff's Motion were various exhibits en-captioned with Case Nos. "2:13-cv-02385-  
 AC" and "2:14-cv-00865-CMK," which appeared to be motions, declarations, and other  
 assorted documents related to two *civil rights* actions Plaintiff filed, and which were still  
 pending in the Eastern District of California. *See Doc. No. 1 at 3-55, Exs. A-I.*

implied his claims were related to two different civil rights actions pending in the Eastern District of California, *see Doc. No. 1, Exs. A-I at 3-55* (citing *Garcia v. Sahir, et al.*, E.D. Cal. Civil Case No. 2:13-cv-02385-AC, and *Garcia v. Foulk*, E.D. Cal. Civil Case No. 2:14-cv-00865-CMK), venue appeared proper in the Eastern District of California, pursuant to 28 U.S.C. § 84(b), but not in the Southern District of California, pursuant to 28 U.S.C. § 84(d) (“The Southern District [of California] comprises the counties of Imperial and San Diego.”). *See May 18, 2015 Order (Doc. No. 2) at 4-5* (citing 28 U.S.C. § 1391(b); *Costlow v. Weeks*, 790 F.2d 1486, 1488 (9th Cir. 1986)).

Plaintiff has since filed a document entitled “Motion for Reconsideration of Abuse of Discretion in Support of Motion to Proceed IFP.” (Doc. No. 5.)

## **II. Plaintiff’s Motion for Reconsideration**

The Federal Rules of Civil Procedure do not expressly provide for motions for reconsideration. However, the Court may reconsider matters previously decided under Rule 60(b). *See Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174 (1989); *In re Arrowhead Estates Development Co.*, 42 F.3d 1306, 1311 (9th Cir. 1994). Rule 60(b) “allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances.” *Gonzalez v. Crosby*, 545 U.S. 524, 528 (2005); *Wood v. Ryan*, 759 F.3d 1117, 1119 (9th Cir. 2014). A district court may properly reconsider and grant relief from a final judgment or order pursuant to Rule 60(b) if it “(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

Plaintiff’s Motion for Reconsideration points to no newly discovered evidence, identifies no intervening change in the legal basis for this Court’s May 18, 2015 Order of dismissal, and offers no argument or evidence to suggest the Court was mistaken in either dismissing his case for failing to pay filing fees, failing to file a

1 Motion to Proceed IFP, or for failing to allege that the Southern District of California  
 2 was the proper venue. Instead, it asks this Court to “end [his] obligation to pay the  
 3 statutory filing fee.” *See* Pl.’s Mot. (Doc. No. 5) at 1.

4 In support, Plaintiff again attaches what appear to be copies of similar motions  
 5 he filed in Lassen County Superior Court, and in *Garcia v. Sahir, et al.*, E.D. Cal.  
 6 Civil Case No. 2:13-cv-02385-AC and *Garcia v. Foulk*, E.D. Cal. Civil Case No.  
 7 2:14-cv-00865-CMK, together with a Declaration attesting that he is “absolutely  
 8 broke,” yet prison officials at HDSP continue to garnish his prison trust account for  
 9 fees due in *Garcia v. Foulk*, E.D. Cal. Civil Case No. 2:14-cv-00865-CMK. *See* Pl.’s  
 10 Mot. (Doc. No. 5) at Ex. A at 5-7, 15.

11 Because Plaintiff never sought leave to proceed IFP in *this* case, he has not  
 12 been “required to pay the full amount of a filing fee” pursuant to 28 U.S.C.  
 13 § 1915(b)(1) based on the initiation of this action, and no fees allegedly being  
 14 garnished by HDSP officials are attributable to any Order issued by this Court. To the  
 15 extent Plaintiff seeks reconsideration of any non-final Order issued in his Eastern  
 16 District of California case, only that Court, or, in the event of a final judgment, the  
 17 U.S. Court of Appeals for the Ninth Circuit, has jurisdiction. In short, this Court has  
 18 no authority to intercede in Plaintiff’s Eastern District case. *See* 28 U.S.C. § 1291  
 19 (vesting appellate jurisdiction over all “final decisions of the district courts” in the  
 20 courts of appeal); *In re McBryde*, 117 F.3d 208, 223, 225-26 & n.11 (5th Cir. 1997)  
 21 (“[T]he structure of the federal courts does not allow one judge of a district court to  
 22 rule directly on the legality of another district judge’s judicial acts or to deny another  
 23 district judge his or her lawful jurisdiction.”); *see also Exxon Mobil Corp. v. Saudi  
 24 Basic Industries Corp.*, 544 U.S. 280, 283 (2005) (“Federal district courts . . . are  
 25 empowered to exercise original, not appellate, jurisdiction.”).

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1           **III. Conclusion and Order**

2           Accordingly, the Court **DENIES** Plaintiff's Motion for Reconsideration (Doc.  
3 No. 5). The case shall remain dismissed without prejudice for the reasons stated in the  
4 Court's May 18, 2015 Order (Doc. No. 2) and pursuant to the Clerk's Judgment  
5 entered on the same day (Doc. No. 3).

6           **IT IS SO ORDERED.**

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8           DATED: September 21, 2015

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10          BARRY TED MOSKOWITZ, Chief Judge  
11          United States District Court

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